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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

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No. **1417** 102

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SOUTHERN PACIFIC COMPANY,

*Petitioner,*

*vs.*

THE UNITED STATES

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PETITION FOR WRIT OF CERTIORARI TO THE  
COURT OF CLAIMS AND BRIEF IN SUPPORT  
THEREOF.

---

C. O. AMONETTE,  
↓ LAWRENCE CAKE,  
*Counsel for Petitioner.*



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THE HISTORY OF THE

REIGN OF

CHARLES THE FIRST

BY

JOHN BURNET

OF THE UNIVERSITY OF OXFORD

IN TWO VOLUMES

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Sign of the Sun, in St. Dunstons Church-yard

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**No. 1417**

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SOUTHERN PACIFIC COMPANY,

*Petitioner,*

*vs.*

THE UNITED STATES,

*Respondent*

---

**PETITION FOR WRIT OF CERTIORARI TO THE  
COURT OF CLAIMS**

---

Southern Pacific Company, a corporation, prays that a writ of certiorari issue to review the judgment of the Court of Claims, entered on January 6, 1947 (plaintiff's motion for new trial overruled on March 3, 1947), in the above entitled case, No. 46018, in the Court of Claims.

**Summary Statement of the Case**

Petitioner, a common carrier by railroad, claims a balance due on its account for the transportation of mail on a certain mail route in California for the month of December 1940. The mail route in question is in part over land-grant aided lines operated by petitioner, Southern Pacific Company, as lessee of Southern Pacific Railroad Company. For the transportation of the mail over these lines, prior to

the effective date of Section 321, Title III, Part II, Transportation Act of 1940, petitioner's compensation was subject to land-grant deductions, that is to say, was limited to 80% of the rates prescribed by the Interstate Commerce Commission as reasonable. After the effective date of Section 321 of the Transportation Act of 1940 the full rates prescribed by the Interstate Commerce Commission became applicable.<sup>1</sup>

The question in this case is, when were land-grant releases filed as required by subsection (b) of section 321, so that the full rates became applicable?

Petitioner contends that with respect to the land-grant lines which formed the mail route in question, the releases were filed and the full rates became applicable on December 6, 1940. The Government, on the other hand, has taken the position that the full rates did not become applicable until December 28, 1940. The period in dispute, therefore, is the period from December 6 to December 27, 1940, inclusive.

The facts with respect to the filing of the releases in question, by petitioner and petitioner's lessors, are briefly as follows:

Petitioner, Southern Pacific Company, is the carrier and operating company of the Southern Pacific system, part of petitioner's lines being leased from Southern Pacific Railroad Company and part from Central Pacific Railway Company. Both parts of the system were land-grant aided.<sup>2</sup>

<sup>1</sup> Act of September 18, 1940, c. 722, 54 Stat. 954; 49 U. S. Code, Sec. 65: " \* \* and the rate determined by the Interstate Commerce Commission as reasonable therefor shall be paid for the transportation by railroad of the United States Mail: \* \* "

<sup>2</sup> The Southern Pacific grants were those made by the Act of July 27, 1866, Sec. 18, 14 Stat. 292 (Southern Pacific "main line" grant), and the Act of March 3, 1871, 16 Stat. 573 (Southern Pacific "branch line" grant); see *Burke v. Southern Pacific R. Co.*, 234 U. S. 669, 680. The Central Pacific grant was made by the Act of July 1, 1862, 12 Stat. 489, as amended by the Act of July 2, 1864, 13 Stat. 356.

Petitioner, therefore, filed two sets of releases pursuant to subsection (b) of Section 321. One set consisted of releases executed by petitioner Southern Pacific Company, and by Southern Pacific Railroad Company and Southern Pacific Land Company (the latter a transferee of certain interests in the granted lands), accompanied by other documents required by the regulations such as minutes of the executive committee and boards of directors of the respective companies authorizing the filing of such releases, evidence of successorship of the companies to the original companies to which the land grants were made, etc. The other set consisted of releases executed by petitioner, Southern Pacific Company, and by Central Pacific Railway Company and Southern Pacific Land Company, and similar supporting documents. Both sets of releases were originally filed on October 28, 1940 (R. 77-78, 90, 94, 107-109).

On November 22, 1940, the releases were returned by the Department of the Interior to petitioner, for recordation in the several counties where the lands or interests therein to which the releases applied were located, as required by the regulations (R. 78, 109).

On December 4, 1940, petitioner submitted other evidence in compliance with the regulations (R. 79, 102, 109).

On December 6, 1940, petitioner resubmitted and filed the releases relating to the *Southern Pacific* grants (which included the land-grant lines which form a part of the mail route in question), with evidence of their recordation in the several counties where the lands or interests therein covered by the releases, were located. These were received in the General Land Office on December 6, 1940, and were the last documents submitted by petitioner with respect to those lines of railroad (R. 79-80, 110-111).

On December 11, 1940, petitioner resubmitted and filed the releases relating to the *Central Pacific* grants with evidence of their recordation in the several counties where the lands

or interests therein covered by the releases were located. These were received in the General Land Office on December 11, 1940, and were the last documents submitted by petitioner with respect to *any* of the lines of railroad operated by petitioner (R. 80, 111).

December 21, 1940, the Commissioner of the General Land Office submitted all the releases to the Secretary of the Interior, stating:

"The releases conform to the law and are in substantial accord with the regulations and I recommend that they be approved. The approval of this letter constitutes the approval of the releases."

The approval of the Assistant Secretary of the Interior was endorsed on the Commissioner's letter, on December 28, 1940 (R. 80-81, 111).

Petitioner's contentions are:

(1) That with respect to the lines in question, on December 6, 1940, petitioner had fully complied with the condition imposed by the statute, by filing the releases in question in the form and manner prescribed by the Secretary of the Interior; that the Secretary of the Interior accepted and approved them as having been filed in conformity with the law and his approval necessarily related back to the date on which the filing was completed; and that consequently the full rates were applicable on the lines in question on and after December 6, 1940.

(2) That at all events the latest date on which the full rates can be said to have become applicable on the lines operated by petitioner is the date on which petitioner, as the carrier and operating company of the Southern Pacific system, completed the filing of the last of the releases in question, i. e., those relating to the Central Pacific grant, on December 11, 1940.



The Government, on the other hand, insists that none of the releases in question was effective until the date of approval thereof by the Secretary of the Interior, on December 28, 1940.

The Court of Claims held that valid releases, conforming to the statutory requirements, were not filed before December 28, 1940, consequently the full rates were not applicable until that date.

### **Statute Involved**

The statute in question is Section 321, Title III, Part II, of the Transportation Act of 1940; Act of September 18, 1940, c. 722, 54 Stat. 898, 954; 49 U. S. Code, sec. 65(a):

"Sec. 321. (a) Notwithstanding any other provision of law, but subject to the provisions of sections 1 (7) and 22 of the Interstate Commerce Act, as amended, the full applicable commercial rates, fares, or charges shall be paid for transportation by any common carrier subject to such Act of any persons or property for the United States, or on its behalf, except that the foregoing provision shall not apply to the transportation of military or naval property of the United States moving for military or naval and not for civil use or to the transportation of members of the military or naval forces of the United States (or of property of such members) when such members are traveling on official duty; and the rate determined by the Interstate Commerce Commission as reasonable therefor shall be paid for the transportation by railroad of the United States mail: • • •"

"(b) If any carrier by railroad furnishing such transportation, or any predecessor in interest, shall have received a grant of lands from the United States to aid in the construction of any part of the railroad operated by it, the provisions of law with respect to compensation for such transportation shall continue to apply to such transportation as though subsection (a) of this section had not been enacted

until such carrier shall file with the Secretary of the Interior, in the form and manner prescribed by him, a release of any claim it may have against the United States to lands, interests in lands, compensation, or reimbursement on account of lands or interests in lands which have been granted, claimed to have been granted, or which it is claimed should have been granted to such carrier or any such predecessor in interest under any grant to such carrier or such predecessor in interest as aforesaid. Such release must be filed within one year from the date of the enactment of this Act. \* \* \*

### **Questions Presented**

1. Whether the filing of the releases in question, on December 6, 1940 (or at the latest, December 11, 1940), and the subsequent approval thereof by the Secretary of the Interior as in conformity with the law and in substantial accord with the regulations, was full compliance with the condition imposed by Section 321 (b) so as to make the full rates applicable from December 6, 1940, or at the latest, December 11, 1940.

2. Whether the approval of the releases in question by the Secretary of the Interior, on December 28, 1940, as in conformity with the law and in substantial accord with the regulations, related back to the date on which the filing was completed, so that the full rates became applicable from that date.

3. Whether the Court of Claims may overrule the determination of the Secretary of the Interior that the releases in question, as filed on December 6, 1940 (or, at the latest, December 11, 1940), were in conformity with the law and in substantial accord with the regulations.

4. Whether the Court of Claims made adequate and correct findings of fact based on the stipulations of the parties and the record before the court, as requested by petitioner.

### **Specification of Errors**

**The Court of Claims erred:**

1. In holding that valid releases, conforming to the statutory requirements, were not filed before December 28, 1940.

2. In holding that the releases as filed on December 6 and December 11, 1940, were not in the form and manner prescribed by the Secretary of the Interior and did not conform to the regulations.

3. In overruling the determination of the Secretary of the Interior that the releases as filed by petitioner on December 6 and December 11, 1940, conformed to the law and were in substantial accord with the regulations.

4. In failing to hold that the approval of the Secretary of the Interior endorsed December 28, 1940, on the Commissioner's letter of December 21, 1940, related back to the date on which the filing of the releases was completed by petitioner.

5. In failing to find (Finding 3) that the date of approval of General Land Office Circular No. 1480 was October 10, 1940, as stipulated by the parties and as shown in 6 F. R. 422.

6. In failing to find (Finding 4) that the releases executed by petitioner and by Southern Pacific Railroad Company, Central Pacific Railway Company, and Southern Pacific Land Company, were executed "pursuant to Section 321(b), Title III, Part II, Transportation Act of 1940, and said Circular No. 1480," as stipulated by the parties (R. 109).

7. In failing to find (Finding 9) the facts as stipulated by the parties, as follows:

"On December 6, 1940, plaintiff, Southern Pacific Company, together with Southern Pacific Railroad

Company and Southern Pacific Land Company, addressed a letter to the Secretary of the Interior stating:

'In compliance with your Circular No. 1480 there are filed herewith the releases executed by Southern Pacific Company, Southern Pacific Land Company and Southern Pacific Railroad Company covering claims to lands, interest therein, etc., under the above-mentioned Southern Pacific Railroad Land Grant Acts, which have been recorded in every county in which any such land or interest is situated.'

"The said letter and enclosures were received in the General Land Office on December 6, 1940, and were the last documents submitted by plaintiff pursuant to Circular No. 1480 with respect to the said lines of railroad. The said lines of railroad owned by Southern Pacific Railroad Company (and operated by Southern Pacific Company) included the lines between Los Angeles and Goshen, California, between the west bank of the Colorado River and Los Angeles, California, and between San Jose and Carnadera, California" (R. 110-111).

8. In failing to find (Finding 10) the facts as stipulated by the parties, as follows:

"On December 11, 1940, plaintiff, Southern Pacific Company, together with Central Pacific Railway Company and Southern Pacific Land Company, addressed a letter to the Secretary of the Interior stating:

'In compliance with Circular No. 1480, there are filed herewith the releases executed by the Southern Pacific Company, Southern Pacific Land Company, and Central Pacific Railway Company, covering claims to lands, interests therein, etc., of the Southern Pacific Company under the above-mentioned land grant acts to the Central Pacific Railway Company and its predecessors in interest, which have been recorded in every county in which any of such released lands or interests are situated.'

"The said letter and enclosures were received in the General Land Office on December 11, 1940, and were

the last documents submitted by plaintiff pursuant to Circular No. 1480 with respect to the said lines of railroad" (R. 111).

9. In failing to made an additional finding as requested by petitioner, as follows:

"On December 30, 1940, the Department of the Interior issued a press release announcing the approval of the releases filed by the Southern Pacific Company and affiliated companies, including the following statement:

'Although formal approval by the Secretary of the land-grant claim releases submitted by the railroads paves the way for the initiation of increased rates for the Government business, it was emphasized today that, under the Act, the Department of the Interior maintains no jurisdiction over the matter of railroad rates or the date upon which increases may be put into effect' " (R. 117).

"On May 9, 1941, Assistant Secretary Chapman addressed a letter to Mr. J. J. Pelley, President, Association of American Railroads, in part as follows:

'I do not see that any useful purpose would be served by revoking Section 273.67 of the regulations. This is especially true in view of the fact that releases covering practically all of the land-grants have been filed and after due consideration have been approved.

'However, I should point out that this Department has, of course, no jurisdiction over transportation rates, charges, or fares. Section 273.67, therefore, was not intended to be, and should not be construed to be, a statement by this Department as to when the higher rates should go into effect, as the result of the approval of a release' " (R. 115-116).

### **Reasons for Allowance of the Writ**

The Court of Claims in this case has failed to give effect to an act of Congress (Section 321 of the Transportation

Act of 1940), which provides that the full rates in question shall be applicable upon the "filing" of land-grant releases in the form and manner prescribed by the Secretary of the Interior.

The Court of Claims, moreover, has failed to give effect to, and has overruled, the determination of the Secretary of the Interior that the releases in question, as filed on December 6, 1940, and December 11, 1940, were in conformity with the law and in substantial accord with the regulations.

The Court of Claims has also failed to make adequate and correct findings of fact based on the stipulations of the parties and the record before the court, as requested by petitioner.

Petitioner submits that the result reached is due to a misapprehension of the facts, and especially the effect of the determination made by the Secretary of the Interior that the releases in question, as filed by petitioner on December 6 and 11, 1940, were in conformity with the law and in substantial accord with the regulations. The result is that the Court of Claims has in effect overruled a determination of the Secretary of the Interior in a matter especially committed to him by the statute in question.

The case involves a question of importance, the effective date of Section 321 of the Transportation Act of 1940, and the decision of the Court of Claims will be controlling in other similar cases. In one respect it is a novel question, as to what constitutes a "filing" in the sense of the statute, to give effect to the full rates in question. In another respect, the case involves a point on which the decision of the Court of Claims is in conflict with many decisions of this Court, to the effect that when the Secretary of the Interior is charged with the duty of approving a filing or selection or other similar action under the public land laws,

and does so, his act of approval relates back to the date on which the filing was completed.

WHEREFORE, it is respectfully submitted that the writ of certiorari herein prayed should be allowed.

C. O. AMONETTE,  
LAWRENCE CAKE,  
*Counsel for Petitioner.*

UNITED STATES OF AMERICA

DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

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No. 1417

---

SOUTHERN PACIFIC COMPANY,

*Petitioner,*

*vs.*

THE UNITED STATES,

*Respondent*

---

**BRIEF FOR PETITIONER IN SUPPORT OF PETITION  
FOR CERTIORARI**

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**Opinion Below**

The opinion of the Court of Claims is reported in —F. Supp. —, and is included in the record herein (R. 83-87).

**Jurisdiction**

The judgment of the Court of Claims was entered on January 6, 1947 (R. 87), and motion for new trial was overruled on March 3, 1947. The jurisdiction of this Court is invoked under Section 3 of the Act of February 13, 1925, c. 229, 43 Stat. 939, as amended; 28 U. S. Code, Section 288.

**Statement of the Case**

The case is stated in the petition for certiorari.

### **Specification of Errors to Be Urged**

The Court of Claims erred:

1. In holding that valid releases, conforming to the statutory requirements, were not filed before December 28, 1940.
2. In holding that the releases as filed on December 6 and December 11, 1940, were not in the form and manner prescribed by the Secretary of the Interior and did not conform to the regulations.
3. In overruling the determination of the Secretary of the Interior that the releases as filed by petitioner on December 6 and December 11, 1940, conformed to the law and were in substantial accord with the regulations.
4. In failing to hold that the approval of the Secretary of the Interior endorsed December 28, 1940, on the Commissioner's letter of December 21, 1940, related back to the date on which the filing of the releases was completed by petitioner.
5. In failing to find (Finding 3) that the date of approval of General Land Office Circular No. 1480 was October 10, 1940, as stipulated by the parties and as shown in 6 F. R. 422.
6. In failing to find (Finding 4) that the releases executed by petitioner and by Southern Pacific Railroad Company, Central Pacific Railway Company, and Southern Pacific Land Company, were executed "pursuant to Section 321(b), Title III, Part II, Transportation Act of 1940, and said Circular No. 1480," as stipulated by the parties.
7. In failing to find (Finding 9) the facts as stipulated by the parties, as follows:

"On December 6, 1940, plaintiff, Southern Pacific Company together with Southern Pacific Railroad Com-

pany and Southern Pacific Land Company, addressed a letter to the Secretary of the Interior stating:

'In compliance with your Circular No. 1480 there are filed herewith the releases executed by Southern Pacific Company, Southern Pacific Land Company and Southern Pacific Railroad Company covering claims to lands, interest therein, etc., under the above-mentioned Southern Pacific Railroad Land Grant Acts, which have been recorded in every county in which any such land or interest is situated.'

"The said letter and enclosures were received in the General Land Office on December 6, 1940, and were the last documents submitted by plaintiff pursuant to Circular No. 1480 with respect to the said lines of railroad. The said lines of railroad owned by Southern Pacific Railroad Company (and operated by Southern Pacific Company) included the lines between Los Angeles and Goshen, California, between the west bank of the Colorado River and Los Angeles, California, and between San Jose and Carnadera, California."

8. In failing to find (Finding 10) the facts as stipulated by the parties, as follows:

"On December 11, 1940, plaintiff, Southern Pacific Company, together with Central Pacific Railway Company and Southern Pacific Land Company, addressed a letter to the Secretary of the Interior stating:

'In compliance with Circular No. 1480, there are filed herewith the releases executed by the Southern Pacific Company, Southern Pacific Land Company, and Central Pacific Railway Company, covering claims to lands, interests therein, etc., of the Southern Pacific Company under the above-mentioned land-grant acts to the Central Pacific Railway Company and its predecessors in interest, which have been recorded in every county in which any of such released lands or interests are situated.'

The said letter and enclosures were received in the Central Land Office on December 11, 1940, and were the last documents submitted by plaintiff pursuant to Circular No. 1480 with respect to the said lines of railroad."

9. In failing to make an additional finding as requested by petitioner, as follows:

"On December 30, 1940, the Department of the Interior issued a press release announcing the approval of the releases filed by the Southern Pacific Company and affiliated companies, including the following statement:

'Although formal approval by the Secretary of the land-grant claim releases submitted by the railroads paves the way for the initiation of increased rates for the Government business, it was emphasized today that, under the Act, the Department of the Interior maintains no jurisdiction over the matter of railroad rates or the date upon which increases may be put into effect.' "

"On May 9, 1941, Assistant Secretary Chapman addressed a letter to Mr. J. J. Pelley, President, Association of American Railroads, in part as follows:

'I do not see that any useful purpose would be served by revoking Section 273.67 of the regulations. This is especially true in view of the fact that releases covering practically all of the land-grants have been filed and after due consideration have been approved.

However, I should point out that this Department has, of course, no jurisdiction over transportation rates, charges, or fares. Section 273.67, therefore, was not intended to be, and should not be construed to be, a statement of this Department as to when the higher rates should go into effect, as the result of the approval of a release.' "

### Outline of the Argument

As stated in the petition for certiorari, the question presented is—*when* were the land-grant releases required by subsection (b) of section 321 of the Transportation Act of 1940, as a prerequisite to the taking effect of the full rates prescribed by subsection (a), "filed" by petitioner?

The releases filed by petitioner and its lessor, Southern Pacific Railroad Company, with respect to the land-grant aided lines of Southern Pacific Railroad Company (including the mail route in question), were originally filed on October 28, 1940, but were not then complete because of various requirements of the regulations (General Land Office Circular No. 1480, 6 F. R. 422).

They were completed, by recordation in the several counties where the lands or interests therein to which the releases applied were located, and re-submitted on December 6, 1940, together with other evidence required by the regulations. The recorded releases and accompanying documents, so filed on December 6, 1940, were the last documents filed by petitioner, pursuant to subsection (b), with respect to the Southern Pacific Railroad land-grant lines (including the mail route in question).

On December 21, 1940, the Commissioner of the General Land Office submitted them to the Secretary of the Interior, together with other releases relating to the Central Pacific land-grant lines, also operated by petitioner, stating that the releases conformed to the law and were in substantial accord with the regulations, and recommending that they be approved. They were thereupon approved, without qualification, on December 28, 1940.

Petitioner's contention, in short, is that with respect to the mail route in question, petitioner, on December 6, 1940, had fully complied with the condition imposed by the statute, by filing the releases in question in the form and

manner prescribed by the Secretary of the Interior; that the Secretary of the Interior accepted and approved them as having been filed in conformity with the law, and his approval necessarily related back to the date on which the filing was completed; and that consequently the full rates were applicable on the lines in question on and after December 6, 1940.

1. The statute is clear and unambiguous. It required simply that the releases be filed "in the form and manner prescribed by the Secretary of the Interior." Petitioner filed the releases in the form and manner prescribed, and otherwise complied with the regulations, to the satisfaction of the Secretary of the Interior, as evidenced by the approval of the releases as finally completed and filed. All that petitioner was called upon to do was completed on December 6, 1940. Nothing more was called for. Nothing more was filed. The recommendation of the Commissioner of the General Land Office that they be approved because they "conform to the law and are in substantial accord with the regulations" was unqualified. The approval of the Secretary of the Interior on December 28, 1940, was likewise unqualified.

2. Paragraph 273.67 of the regulations<sup>3</sup> (General Land Office Circular No. 1480, F. R. 422) which provided that the filing of a release would not be effective for the purpose of enabling the carrier to invoke the benefits of subsection (a) until such release had been approved by the Secretary—if construed as intended to fix the date of approval

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<sup>3</sup> "273.67. *Validity.* The filing of a release will not be complete and effective for the purpose of enabling the carrier to invoke the benefits of section 321 (a) of Part II of Title III of the Transportation Act of 1940 until it has been filed in the form and manner prescribed by these regulations, and until the release has been approved by the Secretary of the Interior. The company will be given prompt notice of such approval, or other action."



of the release as the effective date of the full rates<sup>4</sup>—is in conflict with the statute itself and therefore invalid and of no effect. There is nothing in the statute which authorizes the Secretary of the Interior to make such a regulation. On the contrary, the statute itself prescribes the effective date of the increased rates, i.e., when the carrier “shall file with the Secretary of the Interior in the form and manner prescribed by him” the releases in question. The Secretary is charged with the duty of prescribing the form and manner of filing of the releases, and of receiving and filing them. His approval in such a case is in the exercise of an authority and discretion to see that the statutory requirements are met. But it is not an arbitrary discretion, and certainly it is not a discretion to confer or to withhold rights derived from the statute, *or to decide when they accrue*.

That there are limitations to the power to make regulations and that an administrative officer may not, by prescribing regulations, amend or add to a statute, is well settled. *United States v. George*, 228 U. S. 14; *Payne v. Central Pacific R. Co.*, 255 U. S. 228, 236.

3. The approval by the Secretary of the Interior of the releases in question related back to the date on which the filing thereof was completed by petitioner, December 6, 1940.

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<sup>4</sup> It should be noted that, some time after the promulgation of the regulations, the Secretary disclaimed any attempt to assume jurisdiction “over the matter of railroad rates or the date upon which increases may be put into effect.” See the statement issued by the Secretary on December 30, 1940, after the approval of the releases filed by petitioner (Plaintiff's Exhibit No. 3); also letter from Assistant Secretary Chapman to J. J. Pelley, President, Association of American Railroads (Plaintiff's Exhibit No. 2). In the latter it is stated: “However, I should point out that this Department has, of course, no jurisdiction over transportation rates, charges, or fares. Section 273.67, therefore, was not intended to be, and should not be construed to be, a statement by this Department as to when the higher rates should go into effect, as the result of the approval of a release.”

It is well settled that when the Secretary of the Interior is charged with the duty of approving a filing or selection or other similar action under the public land laws, and does so, his act of approval relates back to the date on which the filing was completed. *Weyerhaeuser v. Hoyt*, 219 U. S. 380; *Payne v. Central Pacific R. Co.*, 255 U. S. 228; *Stalker v. Oregon Short Line R. Co.*, 225 U. S. 142; *Great Northern R. Co. v. Steinke*, 261 U. S. 119.

Compare *United States v. Anderson*, 194 U. S. 394, a case in the Court of Claims involving a claim for the income from public land during the interval between the filing of a selection list and the approval thereof of the Secretary of the Interior.

Most of the cases applying the rule stated—that approval of a filing or listing relates back to the date of filing—make approval retroactive in effect to the date of filing by imposing the duty on the approving officer to act on the basis of facts and conditions at the date of filing. All the decisions are clear, however, that the controlling principle is not the inherently retroactive effect of the approval, but the applicant's compliance at the date of filing with the statutory requirements.

4. The decision of the Court of Claims that no valid releases, conforming to the statutory requirements, were filed before December 28, 1940, is contrary to, and, in fact, overrules the determination made by the Secretary of the Interior that the releases in question, as filed on December 6, 1940, conformed to the law and were in substantial accord with the regulations.

5. Petitioner also submits that, at all events, the latest date on which the full rates can be said to have become applicable on the lines operated by petitioner, is the date on which petitioner, as the carrier and operating company of

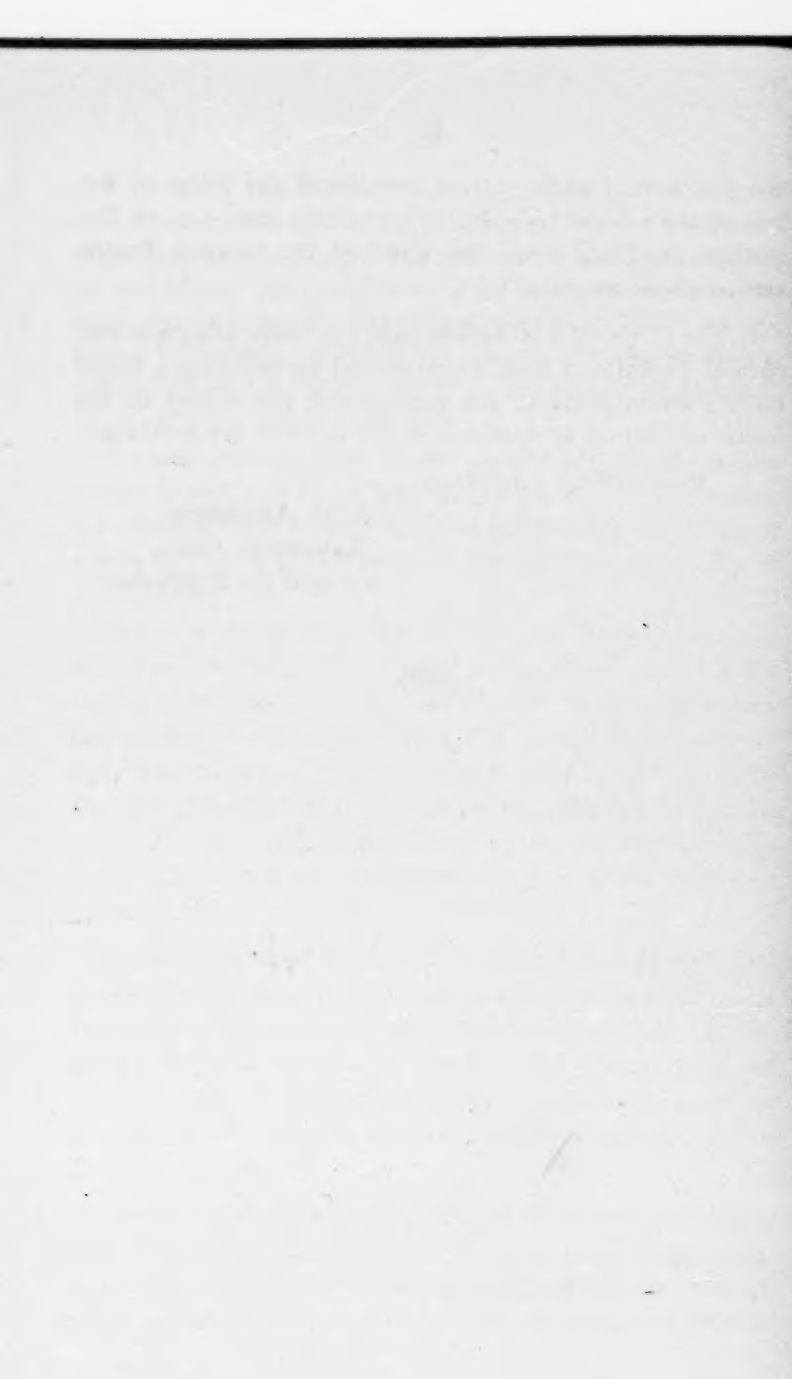


the Southern Pacific system, completed the filing of the last of the releases relating to any of its lines, i.e., on December 11, 1940, when the filing of the Central Pacific releases was completed.

6. The Court of Claims has failed to make adequate and correct findings of fact, as requested by petitioner, based on the stipulations of the parties and the record in the Court of Claims, as specified in the petition for certiorari.

Respectfully submitted,

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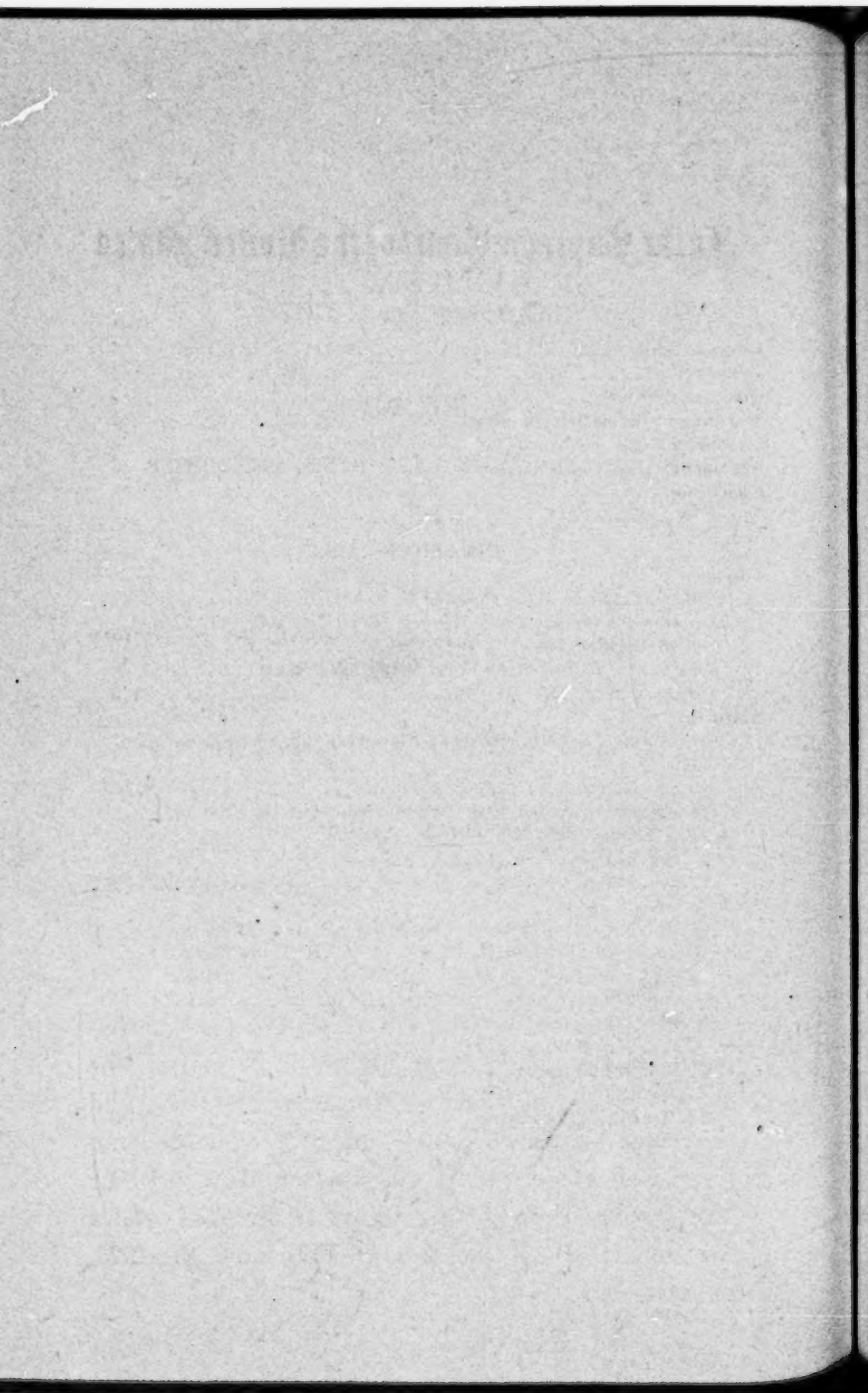
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# **In the Supreme Court of the United States**

OCTOBER TERM, 1947

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No. 102

SOUTHERN PACIFIC COMPANY, PETITIONER

v.

THE UNITED STATES

---

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT  
OF CLAIMS

---

BRIEF FOR THE UNITED STATES IN OPPOSITION

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## **OPINION BELOW**

The opinion of the Court of Claims (R. 83-87) is reported at 107 C. Cls. 513.

## **JURISDICTION**

The judgment of the Court of Claims was entered on January 6, 1947 (R. 87). A motion for a new trial was filed on January 31, 1947, and overruled on March 3, 1947 (R. 87). The petition for a writ of certiorari was filed on May 26, 1947. The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925, as amended.

**QUESTION PRESENTED**

Whether petitioner's right to the full rate for mail carriage, under Section 321 (a) of the Transportation Act of 1940, became effective on December 7 and 11, 1940, when it submitted the public land claim releases required by Section 321 (b) of that Act, or on December 28, 1940, the date of the approval of the releases by the Secretary of the Interior, where the submitted releases admittedly did not fully comply with certain provisions of the applicable rules and regulations issued by the Secretary and petitioner requested waiver of those requirements.

**STATUTE AND REGULATIONS INVOLVED**

The provisions of Section 321 of the Transportation Act of 1940, c. 722, 54 Stat. 898, 954, 49 U. S. C. 65, are set forth in the Appendix, pp. 12-13. Pertinent portions of the regulations issued by the Secretary of the Interior governing releases of public land claims (6 F. R. 422, 43 CFR Cum. Supp. 273.61 *et seq.*) are set forth in the Appendix at pp 14-15.

**STATEMENT**

Petitioner, a land-grant railroad eligible to receive commercial rates for carriage of government property and of mail, as authorized by Section 321 (a) of the Transportation Act of 1940 upon compliance with Section 321 (b) providing for the release of public land claims, brought this

suit in the Court of Claims to recover land-grant deductions taken by the United States on mail shipments over certain of petitioner's California lines during the period from December 6, 1940 to December 28, 1940. The sole contested issue concerns the effective date of petitioner's right to receive the full rate; and the relevant facts, which were found by the lower court as stipulated, are as follows:<sup>1</sup>

Pursuant to General Land Office Circular No. 1480, dated October 10, 1940,<sup>2</sup> setting forth the regulations issued by the Secretary of the Interior under Section 321 (b), petitioner and its affiliated companies, on October 28, 1940, submitted to the Commissioner of the General Land Office, acting for the Secretary of the Interior, separate releases of all their land-grant claims.<sup>3</sup> The releases had

<sup>1</sup> For the purposes of this brief, the truth of the findings which petitioner alleges the Court of Claims erred in failing to make (Pet. 7-9) is assumed.

<sup>2</sup> The Court of Claims was led into the inconsequential error of finding this Circular to have been issued on November 10, 1940 (R. 76) by an inadvertent error in the Commissioner's report to the court.

<sup>3</sup> Section 273.67 of the regulations set forth in Circular No. 1480 provided as follows (R. 77):

273.67. *Validity.*—The filing of a release will not be complete and effective for the purpose of enabling the carrier to invoke the benefits of section 321 (a) of Part II of Title III of the Transportation Act of 1940 until it has been filed in the form and manner prescribed by these regulations, and until the release has been approved by the Secretary of the Interior. The company will be given prompt notice of such approval, or other action.

not been recorded in the counties in which the released land was situated, a requirement imposed by the regulations as a prerequisite to final approval. Section 273.65 (d), *infra*, p. 14. In addition, the releases were admittedly not accompanied by the certificates from the proper county officials, prescribed by the regulations (Section 273.65 (e), *infra*, p. 14), concerning the payment of taxes and freedom from mortgage liens and encumbrances; in its letters of submission petitioner explained that the submission of such certificates would be either too burdensome or, in some cases, impossible, and it requested permission to substitute for the tax certificates a bond protecting the United States against unpaid taxes, and for the certificates of non-encumbrance the affidavit of its company land commissioner, plus an indemnity agreement. (R. 77-78.)

The releases were returned, on November 22, 1940, by the Assistant Secretary of the Interior for recording; specific note was also made of the provisions of the Circular concerning the submission of proper tax and encumbrance certificates before approval, and petitioner's attention was called to the provision of the regulations making approval of the releases a precondition of their effectiveness, in so far as the Interior Department was concerned (R. 78-79).

On December 4, 1940, petitioner transmitted a surety bond to indemnify the United States



against tax liens on the lands and interests included in the releases, and requested the acceptance of this bond in lieu of the tax certificates required by the regulations (R. 79, 102-104). The difficulty and necessary delay in securing these certificates was again explained (R. 103-104). Petitioner also repeated its request that its land commissioner's affidavits of nonencumbrance be accepted in place of the official certificates required by the regulations, and the Secretary's "early decision in this matter" was prayed (R. 104). No tax or nonencumbrance certificates were ever submitted.

On December 6 and 11,<sup>4</sup> petitioner and its affiliated companies returned the various releases with proof of proper recordation (R. 79-80), and these were the last documents submitted by petitioner, or on its behalf, pursuant to Circular No. 1480 or Section 321 (b) of the Act.

On December 21, 1940, the Commissioner of the General Land Office presented these releases to the Secretary of the Interior for his approval (R. 80-81). The letter of transmittal pointed out that the companies had furnished an indemnity bond against

<sup>4</sup> The mail route in question included the land-grant lines, lying mainly in Southern California, which are owned by the Southern Pacific Railroad Company and leased to petitioner. The releases concerning these lines were returned on December 6 (R. 79, 110-111). The releases concerning all the other land-grant lines operated by petitioner, not involved in the present claim, were returned on December 11 (R. 80, 111).

tax liens, and their own land commissioner's affidavits of nonencumbrance, in lieu of the two sets of official certificates required by the regulations, and added that "the resident attorney of the companies requests that the bond be considered sufficient as to taxes and states that he believes it to be impossible to obtain certificates from the county officers that there are no mortgage liens or other encumbrances affecting the released lands, explaining that the record contains a certificate that the lands are free from mortgage liens and encumbrances. The bond appears sufficient to cover any taxes, and the Land Commissioner's certificate, which, as the resident attorney states has been duly filed, may be taken as satisfactory evidence of nonencumbrance." (R. 81.) The Commissioner of the General Land Office concluded that "the releases conform to the law and are in substantial accord with the regulations," and he recommended approval. On December 28, 1940, the Assistant Secretary of the Interior endorsed his approval on this letter (R. 81).

As compensation for the instant mail shipments over petitioner's lines, from December 6 to December 27, 1940, the United States made payment at the land-grant rate of 80% of the non-land-grant compensation, under the provisions of Section 5 of the Act of July 28, 1916, c. 261, 39 Stat. 412, 426, 39 U. S. C. 536, *infra*, p. 15 (R. 82). Petitioner accepted these payments under protest, claiming to be entitled to the full rate, under

Section 321 (a) of the Transportation Act of 1940, for all services rendered after December 6, 1940, or at the least, after December 11 (R. 82). The parties stipulated that if petitioner were entitled to the full rate after December 6, the sum of \$10,510.49 was owing to it for services from that date to December 28, and that if the full rate became effective on December 11, the sum owing was \$9,077.19 (R. 82).

The Court of Claims dismissed petitioner's claim (R. 83) and entered judgment against it (R. 87), on the ground that the releases, as finally submitted on December 6 and 11, did not fully comply with the applicable regulations, and it was not until the Secretary approved the deviations on December 28 that the petitioner could be said to have filed releases "in the form and manner prescribed" by the Secretary, so as to authorize payment by the Government of the full rate to petitioner (R. 86-87).

#### ARGUMENT

Petitioner was not entitled to receive full rates for carriage of mail or government property at least until it had submitted its release "in the form and manner prescribed" by the Secretary of the Interior. Section 321 (b), *infra*, p. 13; see *Krug v. Santa Fe P. R. Co.*, 329 U. S. 591. Admittedly, the instant releases, as finally submitted with their accompanying documents on December 6 and 11, 1940, failed to conform to the prescribed regulations in two respects, *i. e.* official

certificates of tax payment and of nonencumbrance were not supplied as required by Section 273.65 (e) of Circular No. 1480. Instead, petitioner furnished an indemnity bond in place of the tax certificates and substituted the affidavit of its own private land commissioner for the required county officials' certificates of freedom from encumbrance. In the original submission of its releases on October 28, 1940, petitioner recognized its departure from the regulations, and argued at length the convenience and suitability of the proposed substitutes (R. 93, 99-101). When the indemnity bond was transmitted to the Department of the Interior on December 4, 1940, petitioner requested its acceptance and approval of the releases "without awaiting the execution and filing of certificates of various county officers to the effect that all taxes on the lands released, and the interests therein, have been paid" (R. 103), and the reasons for Departmental approval of this deviation were reiterated; request was likewise again made for acceptance of its land commissioner's certificate in lieu of the other set of official certificates normally required; and the Secretary's "early decision in this matter" was sought (R. 104).<sup>5</sup>

As the Court of Claims held, it was not until the

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<sup>5</sup> The Department's letter of November 22, 1940, had specifically drawn petitioner's attention not only to the recordation requirement but also to the necessity of supplying the official certificates (R. 78-79).

Assistant Secretary's approval of December 28, 1940 that petitioner's admitted deviations from the Secretary's general requirements were authoritatively confirmed, and its releases could be said to have been submitted "in the form and manner prescribed" by the Secretary. The Commissioner of the General Land Office was not empowered, and did not purport to modify the applicable requirements; his letter presenting petitioner's releases for effective approval expressly pointed out the deviations and outlined the reasons urged by petitioner, with which he agreed, for acceptance of the modifications (R. 81). The Assistant Secretary, as the Secretary's deputy in these matters,<sup>6</sup> was authorized to suspend the strict requirements of the regulations upon a proper showing, and the Commissioner's suggestion of approval was tantamount to a recommendation that this was a proper case for the exercise of that power. Certainly, the Assistant Secretary was free to disapprove the documents for failure to comply with the regulations and to remit petitioner to the letter of the requirements. For petitioner's benefit, and at its urging, he chose to make an exception to the general rules.

Petitioner's only answer to the lower court's conclusion that, in these circumstances, com-

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<sup>6</sup> Petitioner and the court below both properly assume that the Assistant Secretary's action was in all respects that of the Secretary. *Robertson v. United States ex rel. Baff*, 285 Fed. 911 (App. D. C.); *Turner v. Seep*, 167 Fed. 646 (C. C. E. D. Okla.); and see the discussion in 57 I. D. 262.

pliance with Section 321 (b) of the Act did not antedate December 28, is that the Assistant Secretary must have found the releases, as submitted, to have conformed to Circular No. 1480, since he endorsed his approval on the Commissioner's letter, which concluded that "the releases conform to the law and are in substantial accord with the regulations" (R. 81) (Pet. 4, 7, 10, 20). Aside from the unwarranted assumption that the Secretary's endorsement approval of the releases implied adoption of the form of the Commissioner's conclusion, petitioner errs in reading the Commissioner's words "substantial accord" to mean that the requirements of the regulations had been fulfilled in terms. The text and context of his letter make it clear that he intended no more than that petitioner's proposed substitutes for the required official certificates adequately served the same purposes, in the circumstances of this case, and the strict provisions of the regulations might therefore well be waived. Moreover, even if the intention of the Assistant Secretary and the Commissioner were less clear, the resolution by the Court of Claims of such a factual issue would not be open to attack, especially since, in land-grant matters, the rule of strict construction against the railroad applies in full vigor. Cf. *Northern Pacific Ry. Co. v. United States*, No. 400, Oct. T. 1946, decided March 3, 1947.

Nor does it advance petitioner's case to contend that the Secretary could not, by *ad hoc* action,

modify or waive the general regulations. At least as between the Government and petitioner, the Secretary was empowered to relax the normal certificate requirements for petitioner's benefit where harm to the interests of the United States would not result. In any case, petitioner cannot rely upon such supposed lack of authority, since on that assumption its undisputed deviations from the promulgated regulations would have compelled disapproval of the submitted releases. Petitioner would then have been forced to await either compliance with the allegedly burdensome certificate requirements of Circular No. 1480, or the publication of a general modification of the original regulations. Petitioner obtained only benefit and suffered no injury from the waiver exercised in its case.

#### CONCLUSION

The decision below is clearly correct, and the case involves an issue peculiar to petitioner's particular releases of its land-grant claims. We therefore respectfully submit that the petition for a writ of certiorari should be denied.

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*Attorneys.*

JULY 1947.



## APPENDIX

1. Section 321 of the Transportation Act of 1940, Act of September 18, 1940, c. 722, 54 Stat. 898, 954, 49 U. S. C. 65, is as follows:

SEC. 321. (a) Notwithstanding any other provision of law, but subject to the provisions of sections 1 (7) and 22 of the Interstate Commerce Act, as amended, the full applicable commercial rates, fares, or charges shall be paid for the transportation by any common carrier subject to such Act of any persons or property for the United States, or on its behalf, except that the foregoing provision shall not apply to the transportation of military or naval property of the United States moving for military or naval and not for civil use or to the transportation of members of the military or naval forces of the United States (or of property of such members) when such members are traveling on official duty; and the rate determined by the Interstate Commerce Commission as reasonable therefor shall be paid for the transportation by railroad of the United States mail: *Provided, however,* That any carrier by railroad and the United States may enter into contracts for the transportation of the United States mail for less than such rate: *Provided further,* That section 3709, Revised Statutes (U. S. C., 1934 edition, title 41, sec. 5), shall not hereafter be construed as requiring advertising for bids in connection with the procurement of transportation services when the services required can be procured from any common carrier lawfully operating in the territory where such services are to be performed.



(b) If any carrier by railroad furnishing such transportation, or any predecessor in interest, shall have received a grant of lands from the United States to aid in the construction of any part of the railroad operated by it, the provisions of law with respect to compensation for such transportation shall continue to apply to such transportation as though subsection (a) of this section had not been enacted until such carrier shall file with the Secretary of the Interior, in the form and manner prescribed by him, a release of any claim it may have against the United States to lands, interest in lands, compensation, or reimbursement on account of lands or interests in lands which have been granted, claimed to have been granted, or which it is claimed should have been granted to such carrier or any such predecessor in interest under any grant to such carrier or such predecessor in interest as aforesaid. Such release must be filed within one year from the date of the enactment of this Act. Nothing in this section shall be construed as requiring any such carrier to reconvey to the United States lands which have been heretofore patented or certified to it, or to prevent the issuance of patents confirming the title to such lands as the Secretary of the Interior shall find to have been heretofore sold by any such carrier to an innocent purchaser for value or as preventing the issuance of patents to lands listed or selected by such carrier, which listing or selection has heretofore been fully and finally approved by the Secretary of the Interior to the extent that the issuance of such patents may be authorized by law.

2. Circular No. 1480 issued by the Secretary of the Interior on October 10, 1940 (6 F. R. 422, 43 CFR, Cum. Supp. 273.61 *et seq.*) provides in part as follows:

\* \* \* \* \*

SEC. 273.65. *Manner of release.*—The following requirements are hereby prescribed as the manner of filing a release:

\* \* \* \* \*

(d) The original release must be recorded at the carrier's expense in each county in which the released lands, or interests, are situated when returned by the Secretary of the Interior for that purpose, except in the case of carriers whose grants have been finally adjusted and closed.

(e) The release, with satisfactory evidence of recordation, must be submitted to the Secretary of the Interior for approval, with a certificate from the proper county officer of each county in which any of the released lands, or interests, are situated, showing that all taxes which have been assessed against the lands or interests therein or which could have operated as a lien thereon at the date of the recordation of the release have been fully paid, and that the titles and interests also are free from mortgage liens and other encumbrances. If the lands are affected by tax liens, or taxes which are not due and payable at the date of recordation of the release, the carrier will be required to furnish a bond with corporate surety or make a cash deposit in the General Land Office in the sum of at least twice the amount of the taxes for the preceding year. If a cash deposit is made, the same will be returned when a receipt is

filed showing that full payment of the taxes has been made.

(f) The execution of the release in the manner provided in this section must be authorized by a resolution of the board of directors of the interested company or in some other legal manner, and should be accompanied by an authenticated copy of such resolution or other authorization. The release must bear the seal of the corporation and be signed, executed, and acknowledged by the proper officer for the company.

\* \* \* \* \*

§ 273.67. *Validity.*—The filing of a release will not be complete and effective for the purpose of enabling the carrier to invoke the benefits of section 321 (a) of Part II of Title III of the Transportation Act of 1940 until it has been filed in the form and manner prescribed by §§ 273.61–273.67, and until the release has been approved by the Secretary of the Interior. The company will be given prompt notice of such approval, or other action.

3. Section 5 of the Act of July 28, 1916, c. 261, 39 Stat. 412, 426, 39 U. S. C. 536, provides in part as follows:

Railroad companies whose railroads were constructed in whole or in part by a land grant made by Congress, on the condition that the mails should be transported over their roads at such price as Congress should by law direct, shall receive only eighty per centum of the compensation otherwise authorized by this section [*i. e.* sections 524–541, 542–568 of 39 U. S. C.].